

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permit 18973 (Application 27579)

Richard V. Decarli

ORDER REVOKING PERMIT

SOURCE: Willow Brook Creek

COUNTY: Sonoma

Pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is revoking Permit 18973 because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 18973 and has not made beneficial use of the water in accordance with the permit, the Water Code, and the State Water Board's regulations.

In addition, the Division is revoking Permit 18973 because the Permittee has failed to use beneficially all or part of the water for the purpose for which it was appropriated in accordance with the Water Code.

The revocation is based upon the following facts, information and conclusions:

PERMITTEE HAS FAILED TO APPLY THE WATER AUTHORIZED BY PERMIT 18973 TO BENEFICIAL USE IN ACCORDANCE WITH THE WATER CODE FOR A PERIOD OF FIVE YEARS OR MORE

1. The permit remains in effect only as long as the water appropriated under the permit is put to beneficial use.
2. Permit 18973 (Application 27579) was issued to Kenneth Carl Wilson on September 12, 1983. The permit authorizes the storage of 10 acre-feet of water for Irrigation use.
3. Division records show Richard V. Decarli (Permittee) was assigned ownership of Permit 18973 on January 30, 1984.
4. Permittee submitted a Request for Extension of Time on December 12, 1990, stating that the dam was washed out in 1986 before full use could be made.
5. Permittee requested, and on November 15, 1993, the Division granted, an extension of time to commence or complete construction work or apply the water to full beneficial use. The time extension order required construction to be complete by December 31, 1993, and that water be fully used by December 31, 1995.
6. After several unsuccessful attempts to contact Mr. Decarli, Division staff conducted an inspection of the water right on November 1, 2006. Staff observed that the reservoir dam was still washed out and found no evidence of any other storage facility.

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7. On March 21, 2007, Division staff sent Mr. Decarli a letter informing him of the finding of the inspection and enclosed a Revocation Request Form and requested the signed and dated form to be returned within 30 days. To date, the Division has not received the Revocation Request Form.
8. The Permittee has not submitted an annual Progress Report of Permittee summarizing water use and project status as required by conditions in the Permit since 1990.
9. When a person fails to use beneficially all or any part of the water claimed by him or her for the purpose for which it was appropriated or adjudicated for a period of five years, such unused water may revert to the public. (Wat. Code, § 1241.)

BASED ON THE ABOVE FACTS AND INFORMATION, THE DIVISION CONCLUDES THAT CAUSE EXISTS FOR THE REVOCATION OF PERMIT 18973 PURSUANT TO WATER CODE SECTION 1410, SUBDIVISION (a) BECAUSE:

1. Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 18973 and has failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.
2. Permittee has failed to use beneficially all or part of the water for the purpose for which it was appropriated for a period of five years or more.

On September 7, 2007, the Division issued a Notice of Proposed Revocation to Permittee by certified mail, which was returned to sender by the U.S. Postal Service. On October 31, 2007, the Division issued a second Notice of Proposed Revocation to Permittee by regular mail. The notices provided that unless the Division received a written request for a hearing signed by or on behalf of the Permittee within 15 days after receipt by the Permittee of the notice, the State Water Board could act upon the proposed revocation of the permit without a hearing. Permittee did not submit a request for a hearing to the Division within the time period provided.

Based on the above facts and conclusions, the State Water Board, Division of Water Rights hereby revokes Permit 18973.

STATE WATER RESOURCES CONTROL BOARD



Victoria A. Whitney
Deputy Director for Water Rights

Dated: JAN 30 2008

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 27579 PERMIT 18973 LICENSE _____

ORDER APPROVING A NEW DEVELOPMENT
SCHEDULE AND AMENDING THE PERMIT

WHEREAS:

1. Permit 18973 was issued to Kenneth Carl Wilson on September 12, 1983 pursuant to Application 27579.
2. Permit 18973 was subsequently assigned to Richard V. Decarli.
3. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board (Board).
4. The permittee has proceeded with diligence and good cause has been shown for said extension of time.
5. Permit Condition 12 pertaining to the continuing authority of the Board should be updated to conform to Section 780(a), Title 23 of the California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 8 of the permit be amended to read:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE December 31, 1993 (0000008)

2. Condition 9 of the permit be amended to read:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE December 31, 1995 (0000009)

3. Condition 12 of the permit be amended to read:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.


The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features

of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

Dated: NOVEMBER 15 1993

ORIGINAL SIGNED
BY ROGER JOHNSON

 Edward C. Anton, Chief
Division of Water Rights

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 18973

Application 27579 of Kenneth Carl Wilson
P. O. Box 696, Geyserville, California 95441

filed on November 8, 1982, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:	Tributary to:
<u>Willow Brook Creek</u>	<u>Petaluma River thence</u>
<u></u>	<u>San Pablo Bay</u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
<u>Reservoir No. 1</u>					
<u>North 2,000 feet and East 500</u>	<u>NW$\frac{1}{4}$ of SW$\frac{1}{4}$</u>	<u>9</u>	<u>5N</u>	<u>7W</u>	<u>MD</u>
<u>feet from SW corner of Projected</u>					
<u>Section 9</u>					

County of Sonoma

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
<u>Irrigation</u>	<u>NW$\frac{1}{4}$ of SW$\frac{1}{4}$</u>	<u>9</u>	<u>5N</u>	<u>7W</u>	<u>MD</u>	<u>35</u>
	<u>SW$\frac{1}{4}$ of NW$\frac{1}{4}$</u>	<u>9</u>	<u>5N</u>	<u>7W</u>	<u>MD</u>	<u>15</u>
					<u>Total</u>	<u>50</u>

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 10 acre-feet per annum to be collected from October 1 of each year to June 30 of the succeeding year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

8. Construction work shall be completed by December 1, 1986.

9. Complete application of the water to the authorized use shall be made by December 1, 1987.

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

11. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

12. Pursuant to California Water Code Sections 100 and 275, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable methods of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

14. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, San Francisco Bay Region, or by the State Water Resources Control Board.

Failure of permittee to comply with this term will subject the permit to revocation, after opportunity for hearing.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: SEPTEMBER 12 1983

STATE WATER RESOURCES CONTROL BOARD

Raymond Nash

Chief, Division of Water Rights